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NO SUMMONS ISSUED

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2012 MAR 15 PM 3:47

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

Attorneys for Defendant Sovereign Bank

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MESIVTHA TIFERETH JERUSALEM,

Plaintiff,

v.

SOVEREIGN BANK and STATEN ISLAND
BANK & TRUST,

Defendants.

CV 12-1301
No. 12-cv-_____

NOTICE OF REMOVAL

ECF Case

**KUNTZ, J.
GO, M.J.**

TO THE CLERK OF THE COURT:

Defendant Sovereign Bank, now known as Sovereign Bank, N.A. (the "Bank"), by its undersigned counsel, hereby removes this action, currently pending in the Supreme Court for the State of New York, County of Kings, bearing Index No. 4442/12 (the "State Action") to this Court pursuant to 28 U.S.C. §§ 1322, 1441 and 1446.

I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. §§ 1332 AND 1441.

A. Procedural Background

1. On February 24, 2012, Plaintiff Mesivtha Tifereth Jerusalem ("MTJ") commenced the State Action in the Supreme Court State of New York, County of Kings, Index No 4442/2012 (AMS). (Attached as Exhibit A is the copy of the complaint in the State Action, dated February 23, 2012 (the "Complaint").)

2. The Complaint alleges a single cause of action for conversion against Defendant Sovereign Bank and purported Defendant Staten Island Bank & Trust related to a series of forged checks that were negotiated between July and December 2011 on MTJ's bank accounts with the Bank. MTJ seeks damages in an amount not less than \$125,400.22.

3. On March 6, 2012, MTJ moved by order to show cause for a temporary restraining order. (Attached as Exhibit B is the Order to Show Cause.)

4. On March 6, 2012, Justice Arthur M. Schack denied MTJ's request for a temporary restraining order. (Attached as Exhibit C is a copy of Justice Schack's Order.)

5. This action is removable under 28 U.S.C. § 1441(a) because it is a civil action over which this Court has original jurisdiction and because the Bank is effecting this removal to the District Court of the United States for the district and division where the State Action is pending.

6. The Court has original jurisdiction over this civil action under 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and because complete diversity of citizenship exists between Plaintiff and the Bank, the only properly named defendant.

B. There Is Complete Diversity of Citizenship Between Plaintiff and the Only Properly Named Defendant

7. Plaintiff Mesivtha Tifereth Jerusalem is a domestic corporation with its main office located at 131 Bloomingdale Road, Staten Island, New York 10309-2817. For diversity purposes, MTJ is a citizen of New York.

8. Defendant Sovereign Bank is a national bank with its main office located in Wilmington, Delaware, 19801. For diversity purposes, the Bank is a citizen of Delaware.

9. Accordingly, there is diversity between Plaintiff Mesivtha Tifereth Jerusalem and Defendant Sovereign Bank.

10. The Complaint purports to state a claim against Staten Island Bank & Trust ("SIB"), however, as set forth below, because MTJ improperly named SIB as a defendant, diversity exists.

C. Staten Island Bank & Trust Has Been Improperly Named As A Defendant

11. Improper joinder of a defendant is established when the removing defendant demonstrates "by clear and convincing evidence . . . that there is no possibility, based on the pleadings, that a plaintiff can state a cause of action against a non-diverse defendant in state court." *In re Fosamax Prods. Liab. Litig.*, 2008 WL 2940560, at *3 (S.D.N.Y. Jul. 29, 2008); *Sherman v. A.J. Pegno Constr. Corp.*, 528 F. Supp. 2d 320, 327 n.10 (S.D.N.Y. 2007).

12. Here, purported Defendant SIB is an entity that *does not* exist, and has not existed since on or about April 12, 2004, long before the purported wrongful conduct alleged in the Complaint.

13. On or about April 12, 2004, SIB merged with and into Independence Community Bank ("ICB"). (See FDIC status report, attached as Exhibit D.) Accordingly, SIB was no longer an active institution. (*Id.*)

14. On September 8, 2006, ICB merged with and into Sovereign Bank. (See Office of Thrift Supervision Certificate of Merger, attached as Exhibit E.)

15. Effective on that date, ICB no longer existed and Sovereign Bank was the surviving institution. (*Id.*)

16. Accordingly, there is no possibility, based on the pleadings, that MTJ can state a cause of action against SIB, an entity that does not exist separate and apart from Sovereign, in state court and diversity is present.

D. The Amount in Controversy Requirement Is Met

17. A removing defendant need only show “a reasonable probability that a claim is in excess of the statutory jurisdictional amount” of \$75,000. *United Food & Comm'l Workers Union v. Centermark Properties Meriden Square, Inc.*, 30 F.3d 298, 304-05 (2nd Cir. 2004) (internal citations omitted). Here, plaintiff alleges damages in the Complaint of “not less than \$125,400.22.” (Complaint ¶ 14.)

18. Accordingly, the Notice of Removal meets the Amount in Controversy requirement.

II. NOTICE OF REMOVAL IS TIMELY

19. Plaintiff filed the Complaint on February 24, 2012. The Bank was served on or about February 24, 2012.

20. The Complaint was the initial pleading received by the Bank setting forth the claims for relief upon which this action is based.

21. The Bank filed this Notice of Removal within 30 days of the Bank's receipt of the initial pleading setting forth the claim for relief upon which this action is based. It is therefore timely under 28 U.S.C. § 1446(b). *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (holding that the 30-day time period under the removal statute begins to run from the date of formal service).

WHEREFORE, Sovereign Bank respectfully removes this action from the Supreme Court of the State of New York, County of Kings, Index No. 4442/12 (AMS), to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

Date: New York, New York
March 15, 2012

Respectfully submitted,

SCHIFF HARDIN LLP

By: 

Mathew H. West

mwest@schiffhardin.com

666 Fifth Avenue
New York, New York 10103
(212) 753-5000

Attorneys for Sovereign Bank

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Date purchased: 2/24/12

-----X
MESIVTHA TIFERETH JERUSALEM,

Index No. 4442/12

Plaintiff,

SUMMONS

-against-

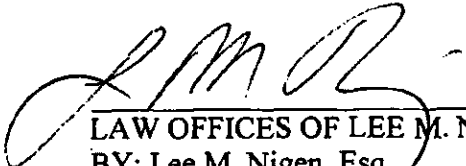
SOVEREIGN BANK and STATEN ISLAND
BANK & TRUST,

Defendant(s).

-----X
TO THE ABOVE NAMED DEFENDANT(S);

You are hereby summoned to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 23, 2012
Brooklyn, New York


LAW OFFICES OF LEE M. NIGEN
BY: Lee M. Nigen, Esq.
Attorney for Plaintiff
26 Court Street, Suite 1013
Brooklyn, New York, 11242
347-294-0661

Defendants' Addresses:

SOVEREIGN BANK
551 5th Avenue, 25th Floor
New York, New York 10176-0001

STATEN ISLAND BANK & TRUST
at 3150 Amboy Road
Staten Island, NY 10306

Cere Janavine
2:03 pm
2/24/12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MESIFTHA TIFERETH JERUSALEM,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

SOVEREIGN BANK and STATEN ISLAND
BANK & TRUST,

Defendant(s).

-----X

Plaintiff MESIFTHA TIFERETH JERUSALEM by its attorneys, LAW OFFICES OF
LEE M. NIGEN as and for its complaint against Defendant, alleges and states as follows:

PARTIES

1. Plaintiff MESIFTHA TIFERETH JERUSALEM, is a Domestic Business Corporation, with its corporate headquarters located at
2. Upon information and belief, Defendant SOVEREIGN BANK is a federal savings bank organized and existing under and by virtue of the law of the United States of America, with one of its offices located at 551 5th Avenue, 25th Floor, New York, New York 10176-0001.
3. Upon information and belief, Defendant STATEN ISLAND BANK & TRUST is a subsidiary of Sovereign Bank, with one of its offices located at 3150 Amboy Road, Staten Island, NY 10306

JURISDICTION AND VENUE

4. Jurisdiction is claimed under CPLR 301.
5. Venue is claimed under CPLR Article 5 as the county where the cause of action arose.

BACKGROUND

6. The Plaintiff operates as a high school in Staten Island, New York, with an enrollment of several hundred students.
7. At all times relevant herein, the Plaintiff maintained a bank account with the Defendants under the name of Bedek Habais, account number 2166107504.
8. Beginning from a period on or about July 27, 2011 through and including December 4, 2011, two (2) checkbooks were removed from Plaintiff's offices without permission or authority by unknown or unnamed perpetrators.
9. The unknown or unnamed perpetrators then forged signatures on numerous checks drawn on Plaintiff's account maintained at the Defendant banks, totaling a sum of approximately \$125,400.22.
10. A criminal complaint was filed with the New York City Police Department on or about December 16, 2011.

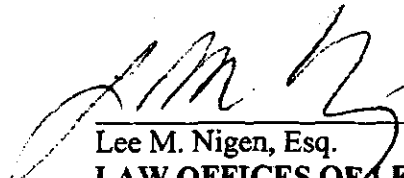
AS AND FOR A FIRST CAUSE OF ACTION: CONVERSION

11. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 10 as though fully set forth herein.
12. That Defendants, by accepting the forged checks without a valid authorized signature, failed to exercise ordinary care under the Uniform Commercial Code.
13. That as a result of the Defendants failure to exercise ordinary care, the Defendants committed conversion of the approximate amount of \$125,400.22, which is rightfully owned by Plaintiff.
14. As a proximate result of Defendants' conversion, Plaintiff suffered damages in an amount to be determined at trial but not less than \$125,400.22.

WHEREFORE, Plaintiff respectfully demands judgment as follows:

- (A) Judgment upon Plaintiff's causes of action in an amount to be in an amount to be determined at trial but not less than \$125,400.22;
- (B) Attorney's fees, costs and disbursements associated with this action;
- (C) For such other, further, and different relief as to this Court seems just and proper.

Dated: February 23, 2012
Brooklyn, New York



Lee M. Nigen, Esq.
LAW OFFICES OF LEE M. NIGEN
Attorneys for Plaintiff
26 Court Street, Suite 1013
Brooklyn, New York 11242
(347) 294-0661

VERIFICATION

STATE OF NEW YORK)
)SS.:
COUNTY OF KINGS)

Lee M. Nigen, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following under penalty of perjury and pursuant to CPLR 2106:

I am the attorney for the Plaintiff MESIVTHA TIFERETH JERUSALEM in the within action. I have read the foregoing Complaint, and know the contents thereof, and that they are true based upon information and belief. My information and belief are based upon my review of the files and records of the files maintained in my office and conversations with my client. I make this Affirmation in place of the Plaintiff based upon the fact that my Law Firm's office is not within the County in which Plaintiff resides.



LEE M. NIGEN, ESQ.

DATED: February 23, 2012
 Brooklyn, New York

MESIFTHA TIFERETH JERUSALEM,

Plaintiff

-against-

SOVEREIGN BANK and STATEN ISLAND BANK & TRUST,

Defendant.

SUMMONS AND COMPLAINT

LAW OFFICES OF LEE M. NIGEN

Attorney(s) for PLAINTIFF

Office and Post Office Address, Telephone

26 Court St., Suite 1013

BROOKLYN, NY 11242

Tel. (347) 294-0661 Fax (347) 294-4002

esqlmn@aol.com

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Dated: _____

Attorney(s) for

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order
will be presented for settlement to the HON.
within named Court, at

on

at

M.

Dated,

of which the within is a true copy
one of the judges of the

Yours, etc.

LAW OFFICES OF LEE M. NIGEN

AT IAS PART ^{2A} of the Supreme Court
of the State of New York Kings County Borough
of Brooklyn City of New York on the 6th day of March 2012

Present HON. ARTHUR M. SCHACK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MESIVTHA TIFERETH JERUSALEM,

Plaintiff,

-against-

SOVEREIGN BANK and STATEN ISLAND
BANK & TRUST,

Defendant.
-----X

ORDER TO
SHOW
CAUSE

Index No.
4442/12

KINGS COUNTY CLERK
FEE PD \$ 45.00
[Signature]

Upon the attorney's affirmation of emergency of Lee M. Nigen, Esq., counsel for Plaintiff

herein, LET defendant SHOW CAUSE before this Court at a Motion Part ^{1AS} 27 hereof, at the

Kings County Courthouse at 360 Adams Street, Room , Brooklyn, New York 11201, why an

ON the 12th day of 2012 at 9:30 AM
Order should not be entered restraining Defendants from conducting any banking operations

376
until defendants shall afford proof that funds converted from the plaintiff's Bedek HaBayit
account have been restored or until a bond has been posted by defendants pending a hearing on
the instant application.

SUFFICIENT CAUSE HAVING BEEN SHOWN, LET defendants also show cause why
a Temporary Restraining Order should not issue pursuant to CPLR Article 63 restraining
defendants from conducting operations pending a hearing on the instant application.

ORDERED, that defendants SOVEREIGN BANK and STATEN ISLAND BANK & TRUST shall be and hereby is directed to suspend all operations pending a hearing on this application.

AM
30
LET PERSONAL SERVICE OF *AND THE PAPER UPON WHICH IT IS BASED*
~~ORDERED, that plaintiff shall serve~~ a copy of this Order upon defendant on or before
March, 2012 *shall be deemed good and sufficient*
~~pursuant to CPLR 308 upon any managing agent of said defendant.~~

defendant's branch - 115 Montague Street, Brooklyn, NY
11201

~~Dated: March, 2012~~

ENTER

[Signature]
HON. ARTHUR M. SCHACK
J.S.C.

At an I.A.S. Trial Term, Part ²² of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 12th day of MARCH 12

P R E S E N T HON. ARTHUR M. SCHACK

Hon. _____

Justice

MESIVTAH TIFERETH JERUSALEM

Plaintiff(s)

Cal. No. 43

Index No. 4442/12

- against -

SOVEREIGN BANK

Defendant(s)

The following papers numbered 1 to read on this motion

Papers Numbered

Notice of Motion - Order to Show Cause

and Affidavits (Affirmations) Annexed

Answering Affidavit (Affirmation)

Reply Affidavit (Affirmation)

_____ Affidavit (Affirmation)

Pleadings - Exhibits

Stipulations - Minutes

Filed Papers

1

2

It's OSC for a temporary restraining order against Sovereign Bank from conducting operations is denied. There are issues with respect to hearing. It wanted to notify Bank of alleged forged checks. Further, pursuant to Art 63 D.R.O. relief, there are questions whether it will have "a ~~likelihood~~ likelihood of success on the merits". See W.T. Grant v. Srigo, 52 NY2d 456, 57 [1981], over 6301, De v Axelrod, 73 NY2d 740, 750 [1988]. In the

For Clerks use only

MG _____

MD _____

Motion Seq. # _____

ENTER

I.S.C.

PAGE 2 of 2

INDEX# 4442/12 --

DATE 3/12/12

PLAINTIFF MESIVTA TIFERET JERUSALEM VS DEFENDANT SOVEREIGN BANK

instant action the delay in notifying
the bank of ~~the~~ forged checks raise
the possibility that the P, as the
depositor of the checks, has the risk
of loss shifted to itself from the
drawee bank as the party best able
to prevent the loss. See Cetty Nat'l Bank
Corp v American Express, 90 L.R. 2d 322,
327 (1997).

ENTERED/SO ORDERED

JSC

PAGE 2

HON. ARTHUR M. SCHACK



Each depositor insured to at least \$250,000 per insured bank

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[ID Map and Definitions](#)

[Disclaimer and Notes](#)

[ID Help](#)

Key demographic information as of March 8, 2012

SI Bank & Trust

81 Water Street
Staten Island, NY 10304

FDIC Certificate #: 15986
Bank Charter Class: Savings Association
Primary Federal Regulator: Office of Thrift Supervision
Primary Internet Web Address: <http://www.sibk.com:80/>

Date Established: 4/7/1884
Date of Deposit Insurance: 7/1/1943

[More Demographic Information](#) →
[Generate History](#) →

Inactive as of:
Closing history:
Acquiring institution:

This is an inactive institution.
April 12, 2004
Merged without Assistance into
Independence Community Bank - (16018)

Information Gateway

ID Report Selections:

[Assets and Liabilities](#)

Report Date:

March 31, 2004

[Generate Report](#)

More Information

- ① [Current List of Offices](#) not available
- ① [Compare to Peer Group\(s\)](#)
- ① [FFIEC Call/TFR Report 3/31/2004 Latest Available](#)
- ① [FFIEC UBPR](#) not available
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Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

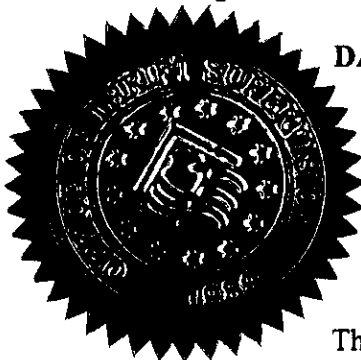
CERTIFICATE OF MERGER

REFERENCE: Independence Community Bank
Brooklyn, New York

I, Roslyn E. Weeks, Corporate Secretary, Office of Thrift Supervision, hereby certify, according to the records of the Office of Thrift Supervision, Department of the Treasury, Washington, DC:

1. Independence Community Bank, Brooklyn, New York, was incorporated under the laws of the State of New York to transact the business of a State Savings Bank;
2. Effective September 8, 2006, Independence Community Bank, Brooklyn, New York, merged with and into Sovereign Bank, Wyomissing, Pennsylvania, and Sovereign Bank, Wyomissing, Pennsylvania was the surviving institution and ;
3. Sovereign Bank, Wyomissing, Pennsylvania, is a federally chartered savings bank, and its charter is in full force and effect.

DATED this 14th day of September 2006.



Roslyn E. Weeks
Roslyn E. Weeks
Corporate Secretary

The foregoing instrument was subscribed and sworn to before me by Roslyn E. Weeks, Corporate Secretary, Office of Thrift Supervision, this 14th day of September, 2006.

Jean B. Gray
Jean B. Gray
Notary Public, District of Columbia
My Commission Expires: 4/14/2010